DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claim 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 4, 11, 12, 13, 14, 16, 19-22, 25, 26, 9, 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if applicant intended to claim a combination including guard members, rail fixed horizontal surface, edge since a guard member and rail are claimed with specific interconnection with a horizontal surface and edge such horizontal surface and rail not being positively claimed making the metes and bounds of the claims unclear and confusing to a potential infringer. Clarification and correction are required. Further, applicant includes remarks that are directed to the relationship of such making the scope of the claim indefinite. The expression "and the like"(claim 9 is unclear and indefinite. Further, claim(s) 11 fail(s) to recite sufficient structural elements and interconnection of the elements to positively position and define how an opaque structure is metallic so that an integral structure able to function as claimed is recited.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 7, 8, 12, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Lindstrom. The patent to Cyrluk teaches structure as claimed including a guard (200), rail structure (122), the height and material of the guard provide a barrier, the material is opaque and the guard being demountable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 4, 6,7, 8, 9, 11, 12, 13, 14, 16, 19-22, 27, 28, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindstrom in view of Cyrluk. The patent to Lindstrom teaches structure substantially as claimed including a safety guard system adapted for prevention of accidental urged dislodgment of an article or liquid over a leading edge of a fixed horizontal surface, the guard system comprising a rail (47)

adapted for alignment at a leading edge and for affixing to the surface, the rail has a base and side walls extending vertically above the base a certain distance, to present a substantially vertically oriented slot for vertical slidable engagement of a guard member (45)therein, the distance being such that the slot is of such depth that horizontal forward and backward disengagement of the guard member is precluded, the guard member being of substantially rectangular cross section in both longitudinal and lateral directions, the guard member adapted for substantially vertical engagement and disengagement with respect to the slot or the rail, the guard member is of such material and height that when in use, the guard member acts as a physical and visual barrier to objects on a far side of the guard member , the only difference being that the guard is not stated as being opaque. However, the patent to Cyrluk teaches the use of providing guard members of opaque material. It would have been obvious and well within the level of ordinary skill in the art to modify the structure of Lindstrom to include the barrier made of opaque material, as taught by Cyrluk since such structures are conventional alternative structures used in the same intended purpose and would have been a reasonably predictable result, thereby providing structure as claimed above, attachment means, the guard made of different materials and place at different locations and of different sizes. To provide a plurality of different types of attachment structures including applied adhesives, double sided adhesives, and mechanical means (such all being commercially available attachment structures) would have been a matter of desirability of how much securement is deemed necessary which would have been obvious and well within the level of ordinary skill in the art and further would have been

reasonably predictable since such would perform as expected, thereby providing structure as claimed. The method would have been obvious in view of the structures. It is noted that a structure is entitled to all of it's uses. Applicant's remarks regarding the height and dimensions of the guard and of a human are noted. In this regard it is noted that : 1) a kitchen bench , a human being, a specific distance, a specific height are not being claimed; 2) the structures of the patents applied function as claimed; 3) the variables of height, distance from the guard, height from the guard, object size to be hidden by the guard are infinite and as such the patent teaches structure as claimed able to function as claimed.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lindstrom in view of Cyrluk as applied to the claims above, and further in view of Sargent. The patent to Lindstrom in view of Cyrluk teaches structure substantially as claimed as discussed above including a plurality of guard members, teaching of using different dimensions, the only difference being that the height of each is not different. However, the patent to Sargent teaches the use of providing different heights of a plurality of guard members to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Lindstrom to include guard members of different heights, as taught by Sargent since such structures are used in the same intended purpose and would have been a predictable result, thereby providing structure as claimed.

Response to Arguments

Applicant's arguments filed 07/19/10 have been fully considered but they are not persuasive. Note the remarks above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (571)272-6865. The examiner can normally be reached on m-f,m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell Jayne can be reached on (571)272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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